

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 8, 1965

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Richard S. Cohen, Asst. Atty. General Dept. " " "

Subject Combination of Towns for Employment of Assessor or Assessing Officer

Your memorandum of January 29, 1965, poses the following questions: whether or not, in light of Title 30 M.R.S.A. Chapter 203 (Inter-local Cooperation), several towns might combine for the purpose of employing an assessor or an assessing officer and if so, whether the above person or persons employed could have the assurance of tenure beyond one year?

ANSWER

No. Several towns could not combine under the authority of the statute on Interlocal Cooperation for the purpose of employing an assessor or an assessing officer.

PERTINENT STATUTES

Law on Interlocal Cooperation--

"It is the purpose of this chapter to permit municipalities to make the most efficient use of their powers by enabling them to cooperate with other municipalities on a basis of mutual advantage . . . etc." 30 M.R.S.A §1951.

"Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this State may be exercised jointly with any other public agency of this State . . . ; any agency of State Government when acting jointly with any public agency may exercise all of the powers, privileges and authority conferred by this chapter upon a public agency." 30 M.R.S.A. §1953.

"For the purpose of this chapter, the term 'public agency' shall mean any political subdivision of this State" 30 M.R.S.A. §1952.

Town Meeting and Elections--

"Each town shall hold an annual meeting in March, at which time the following town officials shall be elected by ballot: Moderator, Clerk, Selectmen, Assessors, Overseers of the Poor . . . , etc." 30 M.R.S.A. §2055.

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"A town may determine at a meeting of its legislative body, held at least 30 days before its annual meeting whether a single assessor or a board of 3, 5 or 7 shall be elected and the term of office of the assessor or assessors. In towns where the legislative body is the town meeting, the determination shall be effective only if the total number votes cast for and against the determination

"When others have not been elected, the selectmen shall serve as assessors, except that when a town has chosen a single assessor under the above paragraph and fails to elect the assessor, the selectment shall appoint the assessor." 30 M.R.S.A. §2060.

"If any municipality does not choose assessors, the selectmen shall be the assessors, and each of them shall be sworn as an assessor." 36 M.R.S.A. §703.

"If for 3 months after any warrant for a state or county tax has been issued, a municipality has neglected to choose assessors or the assessors chosen have neglected to assess and certify such tax the Treasurer of the State or of the county may so notify the County Commissioners.

"On receipt of such notification the County Commissioners shall appoint 3 or more suitable persons in the county to be assessors for such municipality

"Assessors appointed under this section shall be duly sworn; shall be subject to the same duties and penalties as other assessors. . . ."

36 M.R.S.A. §705.

In making a determination under the "Interlocal Cooperation" statute as to what powers or authority may be exercised jointly between public agencies, i.e., towns it can first be seen that to start out with there must be a power, privilege or authority which is capable of being exercised alone by a single public agency.

To determine whether a municipality has power or authority to control the actions of assessors the first thing to look at is

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what type of official is a tax assessor of a municipality. If the tax assessor is deemed to be a "municipal officer" he would likely come under the purview of the municipality and hence the municipality could exert control over the assessor and could very well alter the method of selection and tenure of such official under the above statute.

With respect to who are considered to be municipal officers, it has been stated that a municipal officer is one whose duties and functions relate exclusively to local affairs of the municipality, and the municipality alone is interested in their conduct and administration. 37 Am. Jur. 8233.

In reviewing many case decisions dealing with the authority, functions and relations of tax assessors to the municipalities with which they function, it can be readily seen that tax assessors do not come within the scope of a so-called "municipal official."

Assessors have long been distinguished in the law from being considered "municipal officials," and have been widely held to come under the classification of "public officials." Public officials are deemed to act for the public at large within the geographical boundaries of a state, and not merely as agents acting for the town.

It is true that the above statute dealing with the manner of selection of assessors requires the town to select the assessors and collectors of all state, county and town taxes to be levied within its territory, but the town does this in its relation of being a political agent of the State. The appointment could have been entrusted to some other agency by the legislature. These officers are not corporate agents as such. They are public officers, owing to the public and not to the town alone, the duties imposed by statute. Only their appointment comes from the town. Their authority is from the general statutes, and they cannot be controlled by the town in the execution of that authority.

It has been said many times that strictly municipal affairs comprise the internal business of a municipality. Tax assessments and collections certainly have a direct impact upon the county and State at large as well as in the municipality where they are assessed and collected.

It must be concluded from the foregoing that since the "Interlocal Cooperation" statute allows municipalities to unite for the carrying on of functions together which they could formerly carry on by themselves, several towns could not unite for the purpose of

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employing an assessor or assessing officer in derogation of the general statute on that subject for the main reason of the public rather than municipal character of the tax assessor's position.

As the present statute on Interlocal Cooperation now reads, it must necessarily be limited to powers of a strictly municipal character, i.e., duties and functions relating exclusively to the local affairs of the municipality.

As far as towns combining on the hiring of a so-called "assessing officer", i.e., one carrying out the appraising and clerical functions of the assessor, this could be done under the statutes as they now apply to assessors other than the Interlocal Cooperation statute. In the absence of statute relating to the power of assessors to delegate to others matters relating to the computation of the tax or to the extent of a taxpayer's liability, the existence of such authority usually depends upon whether the particular act or duty sought to be delegated is, on the one hand, ministerial, or on the other, discretionary or quasi-judicial in nature. An assessor cannot delegate to a subordinate the complete performance of all the duties of his office, nor can he delegate those which are discretionary or judicial in nature, such as the ascertainment and determination of the value of the taxable property for purposes of preparing the assessment roll.

It would no doubt be held by the courts that acts in connection with the administration of the assessment function would be valid although performed in the first instance by a subordinate, if they are subsequently ratified or approved by the responsible tax assessor. This view turns on the idea that an act so performed, is at least in the contemplation of the law, performed by the tax assessor, and there is, consequently, no delegation of the latter's authority. 51 Am. Jur. §664.

The above could be accomplished in a simple manner by the assessors involved hiring the same assistants on a shared-time basis.

In conclusion, it would seem that the only way several towns could ever combine for the purpose of employing the same assessors would be under express legislative direction by the way of a specific statute contained within the general laws or by individual towns receiving authority under a private and special law.

RSC:epd

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Inter-Departmental Memorandum Date January 29, 1965

To Richard Cohen, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

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Subject Combination of towns for employment of assessor or assessing officer

Hazen Emery, Chairman of the Board of Assessors in Bangor, has asked me whether there is any way in which several towns might combine for the purpose of employing an assessor, or an assessing officer, and giving the person employed the assurance of tenure beyond one year.

I mention "assessor or assessing officer," meaning by "assessor" a person holding the full authority of that office under the statutes, and meaning by "assessing officer" a person employed to carry out the appraising and clerical functions of the assessor but not having the authority vested by statute in the assessor or board of assessors.

In 1963 the Legislature passed an act providing for inter-municipal co-operation, authorizing in general terms two or more towns to combine in the carrying out of any governmental function which is common to them all. Possibly this act would make it possible to employ a single person to carry out assessing work for several towns, and to give him some reasonable tenure.

At any rate, will you examine the tax statutes and the statute providing for inter-municipal co-operation, and let me know what possibilities there may be, so that I can reply to Mr. Emery.

EHJ:J

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